UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FRANCISCO GARCIA individually, on behalf of his minor child SILVARIO GARCIA and all others similarly situated Plaintiff(s), vs. MICROSOFT CORPORATION Defendant.	)	Case No. 1:07-CV-2363 CC DECLARATION OF BEN SMITH IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

DECLARATION OF BEN SMITH

I , Ben Smith, declare as follows:

1. I am over 21 years of age and am competent to give this declaration. Except where otherwise indicated, I have personal knowledge of the following facts, all of which I believe to be true and correct.

2. I am Group Program Manager, LIVE Services at Microsoft Corporation ("Microsoft"), a position I assumed in December 2006. As Group Program Manager, my responsibilities include design, implementation, and

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management of technical and business policies and the management of the Xbox user community.

3. In the ordinary and regular course of Microsoft's business, I have access to, and use, the agreements Microsoft enters into with subscribers to Xbox LIVE, and account records relating to Xbox LIVE accounts.

4. Microsoft's Xbox LIVE account records show that an account was opened in the name of Francisco Garcia, of 4101 Walton Way, Roswell, Georgia 30076, on June 28, 2005, and assigned an account ID of 79772161. A true and correct copy of the account record for account 79772161 is attached hereto as Exhibit A. These records were created in the ordinary course of Microsoft's business on or about the dates that they bear. It is Microsoft's regular practice to create records such as these when Xbox LIVE accounts are opened and when subsequent transactions affecting those accounts occur.

5. As shown in Exhibit A, account 79772161 was renewed on September 28, 2005 with a payment of $49.99, which is the normal fee charged for one year of Xbox LIVE service. Exhibit A also shows that account 79772161 was renewed one year later, on September 28, 2006, with a second payment of $49.99, and that the account was canceled on October 4, 2006 and a $49.99 refund made as shown under the event name of "OFFSET_LINEITEM."

6. A true and correct copy of the Xbox LIVE Terms of Use in effect when account 79772161 was opened on June 28, 2005, and which were still in effect on September 29, 2005 when account 79772161 was renewed, is attached hereto as Exhibit B.

7. A true and correct copy of the Xbox LIVE Terms of Use in effect when account 79772161 was renewed on September 29, 2006 is attached hereto as Exhibit C. Exhibits A, B, and C are materials kept in the course of regularly conducted business activity by Microsoft, and it is the regular practice of Microsoft to record and maintain these materials.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 15, 2007.

Ben Smith